



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI**  
**(FAMILY DIVISION)**  
**SUCCESSION CAUSE NO 494 OF 2002**  
**IN THE MATTER OF THE ESTATE JOHN KIGUOYA CHEGE**  
**(DECEASED)**  
**RULING**

1. The application subject of this ruling is dated 3<sup>rd</sup> August 2016 and was filed in court on the 4<sup>th</sup> of August 2016. The application, which was filed by **Beatrice Njoki Kiguoya**, the widow of the deceased seeks for revocation and/annulment of the confirmed Grant and costs.
2. The application is supported by the grounds on the face of the of it and an affidavit of the applicant. The gist of the application is that neither the widow nor the other beneficiaries were informed of the application for confirmation of grant nor their consent obtained despite the fact that the widow was a co-administrator and as a result her property was likely to be sold off. Further the mode of distribution was not the desired mode of the applicant.
3. The respondent **Philip Kabiaru Kiguoya**, a son of the applicant and the deceased filed a replying affidavit so did Daniel Kimaiyo, the recovery officer of Consolidated Bank of Kenya Limited who had an interest in L.R.NO. Nairobi/Block 93/590, which property belonged to the deceased until after distribution.
4. The Consolidated bank of Kenya Limited confirmed that the property L.R. NO. Nairobi/Block 93/590 was charged to the said bank for Kshs 10,500,000/= and a legal charge registered against the said property. That there being default on the part of the borrower it had served notice of intention to exercise its statutory power of sale to recover the outstanding loan. Nothing much has been said of the intended auction and Consolidated bank was not heard of thereafter.
5. On 30<sup>th</sup> of January 2018 the court gave various orders to pave way for hearing of the application as follows; -
  - i. Applicant was granted leave to file and serve a report of a handwriting expert on the issue of forgery within 28 days
  - ii. Parties to file witness statements within 42 days
  - iii. Each party to file a bundle of documents
  - iv. Matter referred to mediation in the meantime.
6. The matter went for mediation however there was no success. It was reported that the applicant did not cooperate.
7. On the 23<sup>rd</sup> of August 2016 counsel on record as if to review the earlier orders as none had been complied with agreed to argue the application by way of affidavits evidence. A date was fixed by consent for the 18<sup>th</sup> December 2018 for hearing of the said application in the manner stated above. Notable are submissions filed on behalf of the applicant on the 19<sup>th</sup> of October 2018.
8. On the date taken by consent and slated for hearing the court was informed of the inability due to sickness of Miss Mburu for the respondent to be in court. The court was given a note ostensibly as proof of sickness. However, the note was clear that the note dated the 13<sup>th</sup> of December 2018 indicated resumption of duty was to be on 18<sup>th</sup> of December 2018. Initially the was persuaded to place aside the file to 12noon to allow Miss Mburu's attendance but the court's attention was drawn to the fact that counsel in court Miss Egesa was seized of the matter and had appeared in the same severally. I was persuaded then not to place the matter aside nor adjourn the same as indeed is an old matter. The Court directed the matter to proceed. Counsel for the applicant made submissions whereas Miss Egesa for the respondent declined to make any presentations.

9. The court having considered the matter takes cognisance that the petition for Grant of administration was consented to by the other children of the deceased namely; **Sivester Chege Kiguoya, Esther Muthoni Kiguoya & Benson Gachuhi Kiguoya**. The Petitioners were **Beatrice Njoki Kiguoya**, the widow & **Philip Lawrence Kabiaru**, a son. A grant was issued on the 30<sup>th</sup> of April 2002.

10. On the 19<sup>th</sup> of June 2009 an application for confirmation of Grant dated 16<sup>th</sup> June 2003 was filed by Kimondo, Gacoka & Co. advocates for the administrators. A consent to the confirmation of grant was signed by Silvester Chege Kiguoya, Esther Muthoni Kiguoya and Benson Gachuhi Kiguoya was attached to the application. Based on the application and annexures a Certificate of Confirmation of Grant was issued on the 5<sup>th</sup> of November 2003.

11. Three things stand out in this matter; -

- i. The administrators were represented by counsel at all times.
- ii. The beneficiaries all signed a consent to mode of distribution &
- iii. The applicant signed the transfer of L.R. NO. Nairobi/Block 93/590 to the respondent on the 19<sup>th</sup> April 2004 before an advocate.
- iv. It took 13 years for the applicant and one of the other sons to complain.

12. Notable also is the fact that the applicant does not dispute signing the transfer in favour of the applicant, in 2004 neither is there an allegation of forgery of signatures appended to the consents filed in support of the distribution save the allegation that the other beneficiaries were not consulted and if anyone of the beneficiaries signed the consent it was out of ignorance.

13. I must say from the onset against the documents the applicant executed in the presence of counsel and the consents by other beneficiaries the averments of the applicant cannot hold. I am not convinced that the applicant was not aware of the application for confirmation. This claim fails flat against proof that she signed, which she has not denied the transmission form of property L.R.NO. Nairobi/Block 93/590.

14. Secondly leave was granted for the applicant to file a report from a handwriting expert on alleged forgery, yet this was not filed.

15. Thirdly, the application was filed 13 years after the grant was confirmed, 12 years since the transfer was signed in favour of the applicant and only when there was eminent eviction of the applicant from the L.R. NO. Nairobi/Block 93/590. The applicant is certainly not truthful, I am convinced that this application was filed to defeat the intention of the bank to sell the property named.

16. The applicant failed to prove on a balance of probabilities, that the grant was obtained or confirmed on the basis of untrue facts, fraudulently by concealment of material facts or that the grant ought to be revoked for any other justifiable reason.

17. Consequently the application must fail. It is dismissed with costs.

**Dated, Delivered and Signed in Nairobi this 14<sup>th</sup> day of March 2019**

**ALI-ARONI**

**JUDGE**

In the presence of: -

Court Assistant.....

Counsel for the Applicant.....

Counsel for the Respondent.....